

No. 11-55016

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TARLA MAKAEFF, Individually and on Behalf of All Others Similarly Situated,

Plaintiff-Counter-Defendant-Appellant,

vs.

TRUMP UNIVERSITY, LLC,

Defendant-Counter-Claimant-Appellee.

Appeal from the United States District Court
for the Southern District of California
No. 3:10-cv-00940-IEG(WVG)
The Honorable Irma E. Gonzalez

UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE
PLAINTIFF-APPELLANT'S OPENING BRIEF

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Appellant's Opening Brief in this matter is presently due on April 13, 2011. No extension of time to file the Opening Brief has previously been sought or granted. Pursuant to Federal Rules of Appellate Procedure 26(b) and Circuit Rule 31-2.2(b), and for the reasons set forth below, plaintiff-appellant Tarla Makaeff now respectfully moves this Court for an order extending the time in which to file the Opening Brief until May 26, 2011, which constitutes an extension of forty-three days.

The motion is based on the accompanying Declaration of Eric Alan Isaacson in Support of Plaintiff's Motion for Extension of Time in which to File Opening Brief. As detailed in that declaration, plaintiff-appellant presents this motion because other commitments have made it impossible for the attorney primarily responsible for briefing this appeal on behalf of the appellant to complete an adequate Opening Brief by April 13, 2011.

Currently demanding his attention are a Rule 59(e) motion, due April 4, 2011, in the United States District Court for the Northern District of Illinois, and briefs to be filed on behalf of *pro bono* clients in the Ninth Circuit on April 4, and on April 11.

In other matters for which he is responsible, a petition for certiorari is due April 21, 2011, an *amicus* brief is due in the California Supreme Court by May 2, 2011, and the Second Circuit has set oral argument for May 9, 2011, in *Fait v. Regions Financial*, No. 10-2311. Thus, a 43-day extension of the due date for the

Opening Brief, to May 26, 2011, is reasonable, and will be needed to permit the filing of an adequate Opening Brief in this case.

In accordance with Circuit Rule 31-2.2(b)(5), appellant represents that she has through her counsel exercised diligence and will file the Opening Brief within the time requested. On March 31, 2011 counsel for the defendant-appellee Trump University LLC, was notified of this motion by placing a phone call to David Keith Schneider. Mr. Schneider indicated that Trump University would not oppose this motion. He asked that plaintiff-appellant's counsel extend a similar courtesy should he seek an extension for the Appellee's Answering Brief. To this plaintiff-appellant's counsel readily agreed.

For the reasons set forth in the attached declaration, appellant respectfully requests that this Court enter an order extending the due date for filing the opening brief to May 26, 2011.

DATED: April 1, 2011

Respectfully submitted,

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**DECLARATION OF ERIC ALAN ISAACSON IN SUPPORT OF
PLAINTIFF'S MOTION FOR EXTENSION OF TIME IN WHICH TO FILE
OPENING BRIEF**

I, Eric Alan Isaacson, declare that:

1. I am an attorney duly admitted to practice in the State of California and before the United States Court of Appeals for the Ninth Circuit. I am the counsel of record for the appellant in this action, and am the attorney primarily responsible for briefing this appeal on behalf of the appellant.

2. The Opening Brief was first due, and currently is due, on April 13, 2011. No extension of time to file the Opening Brief has previously been sought or granted.

3. Appellant respectfully moves this Court for an order extending the time in which to file the opening brief to May 26, 2011, which would constitute an extension of forty-three days.

4. Appellant seeks a forty-three day extension of time because of several scheduling conflicts that have made it impossible for me to file an adequate Opening Brief in this matter by April 13, 2011.

5. Although I am the attorney primarily responsible for prosecuting the appeal in this matter, I did not appear in district court proceedings, and thus have had to devote considerable time to familiarizing myself with the trial-court record.

6. I also have had to divide my time between this case, and other matters for which I am responsible.

7. Much of my time in February was consumed by my work representing the appellant in *Fait v. Regions Financial*, No. 10-2311, a complex securities class action in which I filed the Reply Brief in the Second Circuit on March 3, 2011.

8. Most of my time in March has been demanded by two matters in which major briefs are due on Monday, April 4, 2011.

9. I have had to devote much of my time in March to a post-judgment Rule 59(e) motion due to be filed in the United States District Court for the Northern District of Illinois on April 4, 2011, in *City of Livonia Employees' Retirement System v. The Boeing Co.*, No. 1:09-cv-07143. A timely filing is critical to tolling the time to notice an appeal under Federal Rule of Appellate Procedure 4(a)(4).

10. I also have had to devote significant time to an *amicus curiae* brief to be filed the same day in this Court on behalf of *pro bono* clients including the Forum on the Military Chaplaincy, the General Synod of the United Church of Christ, the Presiding Bishop of The Episcopal Church, the Unitarian Universalist Association, and the Universal Fellowship of Metropolitan Community Churches, in *Log Cabin Republicans v. United States*, Nos. 10-56634, 10-568133. See http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000492 (accessed March 31, 2011). The case is one that this Court set for expedited briefing, and no extension of time for an *amicus curiae* brief can reasonably be expected.

11. One week later, on April 11, 2011, I must file a supplemental *amicus curiae* brief on behalf of several Unitarian Universalist *amici* in *Barnes-Wallace v. City of San Diego*, Nos. 04-55732, 04-56167, an appeal that was originally argued in February of 2006, and in which this Court recently requested supplemental briefing in light of intervening developments. Because my clients are appearing as friends of the court, in a matter that likely has been too long delayed already, I do not believe a motion to alter the briefing schedule would be favorably received.

12. Further complicating my schedule is the April 21, 2011, due date for a petition for certiorari to review the dismissal of certain of my clients' claims in *Plumber's Union Local No. 12 Pension Fund v. Nomura Asset Acceptance Co.*, No. 09-2596, 632 F.3d 762 (1st Cir. Jan. 21, 2011), and the fact that the associate who assists me in appellate matters will be out of the office for her wedding and honeymoon from April 12 through April 25.

13. *Amicus curiae* briefs are due May 2, 2011, in the California Supreme Court in *Perry v. Brown* (formerly *Perry v. Schwarzenegger*), on a question certified by the Ninth Circuit in *Perry v. Brown* (formerly *Perry v. Schwarzenegger*), No. 10-15649, a case in which my *pro bono* clients include California Faith for Equality, the California Council of Churches, the General Synod of the United Church of Christ, the Universal Fellowship of Metropolitan Community Churches, and the Unitarian Universalist Association. I filed an *amicus curiae* brief on these clients' behalf before

this Court on October 25, 2010. See <http://www.ca9.uscourts.gov/datastore/general/2010/10/27/amicus41.pdf> (accessed March 31, 2011). I have committed to file a brief on their behalf in the California Supreme Court on May 2, 2011, where the case is on an expedited briefing schedule, and no extension of time can reasonably be expected. See <http://www.courtinfo.ca.gov/courts/supreme/highprofile/prop82011.htm> (“The California Supreme Court shortened the normal briefing schedule to expedite consideration and resolution of the issues in the matter and to accommodate oral argument as early as September 2011.”) (accessed March 31, 2011).

14. I must then fly to New York to argue before the Second Circuit on May 9, 2011, in *Fait v. Regions Financial*, No. 10-2311, an appeal in a complex securities class action that I was responsible for briefing.

15. Due to the above-stated commitments, though I have devoted substantial time to reviewing the record and researching central issues for the appeal in this case, I find myself unable to prepare an Opening Brief that will be ready for filing by April 13, 2011.

16. In light of my professional commitments, I believe an extension of forty-three days, to May 26, 2011, will be needed to permit me to prepare and file an adequate Opening Brief in this case.

17. In accordance with Circuit Rule 31-2.2(b)(5), I represent that I have exercised diligence and will file the Opening Brief within the time requested.

18. I notified David Schneider, counsel for defendant-appellee Trump University LLC, of this motion by telephone on March 31, 2011. He stated that Trump University would not object to the requested extension of time to file the Opening Brief.

19. Mr. Schneider asked for my assurance that plaintiff-appellant will not object to Trump University's request for a similar extension of time for its Appellees' Answering Brief. To this I readily agreed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of April, 2011, at San Diego, California.

s/ ERIC ALAN ISAACSON
ERIC ALAN ISAACSON

DECLARATION OF SERVICE

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. I hereby certify that on April 1, 2011, I electronically filed the foregoing document: **UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE PLAINTIFF-APPELLANT'S OPENING BRIEF** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

3. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 1, 2011, at San Diego, California.

s/ ERIC ALAN ISAACSON

ERIC ALAN ISAACSON

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Case Number: 11-55016	ECF Filing Status
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